

IT 95-65
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )      Docket No.  
OF THE STATE OF ILLINOIS      )      SSN  
      v.                        )  
XXXXXX,                       )      John E. White,  
      Taxpayer                 )      Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of the Administrative Hearings as the result of a timely protest of a Notice of Deficiency ("NOD") by XXXXX ("taxpayer"). The basis of the NOD was the Department's determination that taxpayer failed to report to the Department a final federal change in adjusted gross income for the taxable year ending 12/31/82.

FINDINGS OF FACT:

1. On 8/15/83, taxpayer filed an IL-1040, on which he reported that his federal adjusted gross income for tax year ending 12/31/82 was \$37,018.00. See copy of taxpayer's 1982 IL-1040, attached to NOD, Dept. File Ex. No. 1.

2. On or about January 13, 1988, taxpayer's adjusted gross income was increased after a federal examination. See 1988 IRS Examination Changes, attached to NOD, Dept. File Ex. No. 1.

3. On 6/1/89, taxpayer filed an amended IL-1040X, on which he reported that his adjusted gross income for 1982 was decreased pursuant to the 1988 IRS Examination Change. See IL-1040-X, attached to NOD, Dept. File Ex. No. 1.

4. On June 11, 1990, the Department issued an NOD to taxpayer based

on the 1988 IRS Examination Change. See NOD, Dept. File Ex. No. 1.

5. Taxpayer protested only the amount of adjusted gross income stated on the EDA-24, included with the NOD, because taxpayer claimed that he and the IRS entered into a settlement regarding the amount of the change. See Protest and attachments, Dept. File Ex. No. 2.

6. Taxpayer submitted a payment in the amount of \$187.25 with his Protest. Id.

7. On January 14, 1991, the Department notified taxpayer that "[i]nformation obtained from the Internal Revenue Service by this department does not indicate any changes made to the federal audit report dated January 13, 1988." and asked that he tender a copy of any final federal change. See 1/14/91 letter to taxpayer, Dept. File Ex. No. 3.

8. Taxpayer did not request a hearing. Protest, Dept. File Ex. No. 2.

9. There is no evidence that taxpayer ever responded to the Department's 1/14/91 letter to him.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. Ill.Rev.Stat. ch. 120, 5-904(a)(1981). Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. Ill.Rev.Stat. ch. 120, 5-506(b). In this matter, the documentary evidence taxpayer tendered with his protest is insufficient to rebut the prima facie evidence of the Department.

Taxpayer tendered a copy of a letter from an IRS employee proposing a settlement of the applicable federal adjustment. The Department notified taxpayer that its review of federal documents did not reflect any changes made to the IRS's 1/13/88 report, and taxpayer never tendered a copy of any settlement or agreement documents. The letter tendered by taxpayer states

that if taxpayer did not respond to the proposal, the IRS would proceed based on the 1/13/88 report.

Considering that taxpayer claimed a reduction in the Illinois taxes he paid for 1982 based on a federal increase in his adjusted gross income for that period, I am not inclined to rely on taxpayer's assertion that a settlement proposed by an IRS employee in fact occurred. Therefore, I recommend that the Director finalize the Notice of Deficiency as issued.